Supreme Court, U. S.
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In The

Supreme Court of the United States

Case No. 77-464

PETER STORER and STUART W. PATTON As Co-Executors of the Estate of GEORGE B. STORER, Deceased,

Petitioners,

vs.

DOROTHY M. STORER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FOR THE THIRD DISTRICT

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In The

Supreme Court of the United States

Case No. .....

PETER STORER and STUART W. PATTON As Co-Executors of the Estate of GEORGE B. STORER, Deceased,
Petitioners,

vs.

DOROTHY M. STORER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FOR THE THIRD DISTRICT

Petitioners pray that a writ of certiorari issue to review the judgment of the District Court of Appeal of Florida, Third District, entered on December 17, 1974, certiorari denied by the Supreme Court of Florida on April 7, 1977, rehearing denied June 28, 1977.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District appears at 305 So.2d 212 and is printed in the Appendix hereto at p. A7. The memorandum opinion of the Supreme Court of Florida declining to review the decision of the District Court of Appeal and the denial of rehearing thereof is not yet reported, but is printed in the Appendix to this brief at p. A10.

JURISDICTION

The judgment of the District Court of Appeal of Florida, Third District was entered on December 17, 1974. The Supreme Court of Florida declined to review the decision on April 7, 1977, rehearing thereof denied on June 28, 1977. The jurisdiction of this court is invoked under 28 USC Section 1257(3).

QUESTION PRESENTED

Whether a state must afford full faith and credit under the U. S. Constitution to a divorce decree of a sister state, which was entered after acquiring personal jurisdiction over the parties, and which ordered a substantial alimony award to the wife, when there is no probative evidence which shows a lack of jurisdiction in the divorcing state.

STATEMENT OF THE CASE

Mr. Storer and Respondent were married in 1960 in Saratoga, Wyoming and maintained their legal domicile in Wyoming throughout their married life. Being of substantial financial means, the Storers also maintained a winter home in Miami Beach, Florida and divided the winter months between their home in Florida and their yacht at Lyford Cay in the Bahamas.

The parties were in Florida, as they were every winter of their married life, when on January 25, 1972, Mr. Storer informed his wife that he no longer wished to be married to her. Mrs. Storer remained at the house in Miami. However, in March, she traveled to San Diego, California

for the express purpose of determining whether she would like to live there. (A21) On April 13, 1972, Respondent signed her income and gift tax returns which specifically designated Saratoga, Wyoming as her domicile. (A22) On April 22, 1972, three days before she was served with Wyoming process, Mrs. Storer called the ranch foreman in Wyoming and asked him to ship her personal belongings to San Diego, California. (A22)

On April 25, 1972, Respondent was served with process in an action for divorce instituted by Petitioner in Wyoming. Personal service was effected upon the wife extra-territorially pursuant to Wyoming's "Long Arm Statute" providing for service upon Wyoming domiciliaries residing outside the state. This court in *Millikin* v. *Meyer*, 311 U.S. 457, construed the very Wyoming Statute under which Respondent was served and upheld the validity of service which was effected, outside the state. Petitioner's Wyoming action proceeded to final judgment, divorcing the parties and awarding the wife $300,000 tax free lump sum alimony and periodic alimony in the amount of $2,500 per month.

Respondent did not appear in the Wyoming proceeding, but rather on May 22, 1972, instituted her own action for dissolution in Florida. That dissolution action was brought on the theory and claim that the parties were at all times Florida residents and had never established a Wyoming domicile. Petitioner moved to quash service of process on July 17, 1972, contending that the parties were already divorced by a Wyoming court which obtained personal jurisdiction over Respondent pursuant to the Wyoming Long Arm Statute, and therefore, the Wyoming judgment was entitled to full faith and credit under the U. S. Constitution.

The trial court reserved ruling on the husband's Motion to Quash. Extensive discovery and testimony was taken in support and contravention of that motion, which basically covered the entire life style and history of both parties. The majority of the testimony elicited by Respondent was for the purpose of attempting to establish that the parties were at all times Florida residents and had never become legally domiciled in Wyoming. The trial court denied Petitioner's Motion to Quash, finding that the Wyoming decree was valid and binding insofar as it dissolved the marriage between the parties, but that it did not conclusively adjudicate her property rights in that the Wyoming court had not obtained in personam jurisdiction over Respondent. The court specifically found that the Wyoming Court had no in personam jurisdiction over Respondent because sometime between January of 1972 and April 25, 1972, Respondent changed her domicile to Florida. However, the court also found that up until that time, both parties were legally domiciled in Wyoming. (A4) The only fact relied upon by the trial court to indicate Respondent's manifest intent to change her domicile from Wyoming to Florida, was Respondent's act of tearing up her Will sometime in April. (A4)

An interlocutory appeal was taken from the order denying the Motion to Quash service of process. The District Court of Appeal of Florida, Third District, affirmed and the Supreme Court of Florida declined to review the case by order dated April 7, 1977, rehearing denied June 28, 1977.

REASONS FOR GRANTING THE WRIT

1. The decision of the Florida courts in failing to apply the universally accepted standard of determining domicile, is in conflict with the decision of this court in *Williams* v. *North Carolina* (1945), 325 U.S. 226, 89 L.ed. 1572 and *Texas* v. *Florida*, 59 S.Ct. 563 (1939). The parties were without question domiciled in Wyoming throughout their married life and if the wife had not established a domicile separate from that of her husband when she was served with Wyoming process in Florida on April 25, 1972, she is bound by the Wyoming decree to the same extent as if she had been personally served in Wyoming.

The lower court found that the domiciliary abode was Wyoming and expressly accorded to the Wyoming judgment full faith and credit insofar as it related to jurisdiction to grant the divorce, but denied that the Wyoming court had jurisdiction of the wife for purposes of adjudicating alimony and property rights.

Justice Jackson in *Rice* v. *Rice*, 336 U.S. 674, criticized the concept of divisible divorce and was of the opinion, and properly so, that the decree, if valid for one purpose, was valid for all purposes. In the *Rice* case, Justice Jackson said ". . . confusion now hath made his masterpiece."

The court found that the parties were domiciled in Wyoming until January 1972, and that the husband's domicile continued to be Wyoming after that date. Upon the impossible theory that the parties had two domiciles, the court made a finding, which is wholly unsupported by the record, that the wife changed her domicile from that of Wyoming to Florida between January and April 1972.

In order for the wife to change her domicile from Wyoming to Florida, she must show an abandonment of her Wyoming domicile and an intent to establish a domicile in Florida. (See 25 Am.Jur. 2d, Domicile, Sec. 16) This court in *Williams* v. *North Carolina*, supra, approved a definition of domicile as being the place "where a person voluntarily fixes his abode . . . with a present intention of making it his home."

It is abundantly clear from the evidence in the instant case that Respondent never manifested any intent to acquire Florida domicile.

It is uncontroverted that Respondent was residing at her winter home in Miami during the time period within which the court found that she had changed her domicile, but mere removal to a new place of residence unaccompanied by an intent is not sufficient to establish domicile, *Smith* v. *Croom*, 7 Fla. 81 (1857). Her continued occupancy of the Miami Beach house was not probative of anything, because she and Mr. Storer had used this house for the last twelve years during the winter season while their legal residence was Wyoming.

Inasmuch as "intent" is a subjective state of mind, the mere declaration that one intended to acquire a new domicile, unaccompanied by some positive overt acts is not sufficient to prove domicile. See Keenan, *Residence and Domicile*, Section 420 and 25 Am.Jur. 2d, Domicile, Section 92. The law has always required that where "intent" was an element to be proved, it must be manifest and proved by the evidence of overt acts and circumstances by which a reasonable man could believe that the intent to do a particular thing was present.

The burden of proving the change of domicile by presenting such facts and circumstances which demonstrate

the abandonment of the old domicile and the establishment of a new domicile is clearly upon the party asserting the change of domicile. In *Texas* v. *Florida*, supra, the Supreme Court stated:

> ". . . In such circumstances Florida carried the burden of showing that the earlier domicile was abandoned in favor of a later one. Mitchell v. United States, supra (21 Wall. 352, 22 L.ed. 587); Anderson v. Watt, 138 U.S. 694, 706, 34 L.ed. 1078, 1082, 11 S.Ct. 449; Re Newcomb, supra (192 N.Y. 250, 84 N.E. 950); Beale Confl. L. Section 41A, supra. . . ."

It is abundantly clear that Respondent failed to meet the burden of proof set down by this court, in that she failed to establish even one fact which would prove that she changed her domicile. The wife's own testimony conclusively establishes, contrary to the findings of the court, that she did nothing to become a domiciliary of Florida between January and April 25, 1972, and that the only action ever taken by her was not taken until May 24, 1972, when she registered to vote in Dade County, Florida. This was after she had been served with the Wyoming process on April 25, 1972. This was also after she had filed her petition for dissolution.

The wife was cross examined as to her conduct month by month from November 1971, when the parties arrived in Miami for the winter, through May of 1972, as to what, if anything, she did to evidence a change of residence between November 1971 and May 1972, which covered the period in which she was served with process, viz.: April 25, 1972. In each instance her reply was that she had done nothing by word, act or deed to give outward evidence of an intention to change her residence, because she at all times had been a resident of Florida and had never become a resident of Wyoming. She further tes-

tified that she did nothing in that regard until May 25, 1972, when she registered to vote in Florida. Her latest confirmation of Wyoming residence was the signing of the 1971 income and gift tax returns on April 14, 1972.

The Florida court's finding that Respondent changed her domicile to Florida being unsupported by any facts which would establish an intent to acquire such domicile is in conflict with this court's decision in *Texas* v. *Florida,* supra.

2. The court arbitrarily and without any record foundation held that Mrs. Storer had abandoned her Wyoming domicile and manifested an intent to acquire permanent domicile in Florida. Having failed to apply the standard set down by this Court in *Williams* v. *North Carolina,* supra, and *Texas* v. *Florida,* supra, in determining the abandonment of Wyoming domicile, Wyoming remained Mrs. Storer's domicile and the judgment of the Wyoming court was entitled to full faith and credit under the U. S. Constitution. Failure to afford full faith and credit to the decree of the Wyoming court, which properly acquired jurisdiction over its absent domiciliary violates and contradicts the U. S. Constitution as universally interpreted to require full faith and credit be given to judgments of sister states when based upon properly acquired jurisdiction.

Although recognizing the great hesitancy with which the Supreme Court would review determination of jurisdiction predicated upon the fact of domicile, this court in *Williams,* supra, nevertheless, held that a determination of domicile must be based upon relevant facts and this Court would review such determinations when they were used to subvert the full faith and credit clause of the U. S. Constitution. The court in *Williams* stated:

> "The challenged judgment must, however, satisfy our scrutiny that the reciprocal duty of respect owed by the states to one another's adjudication, has been fairly discharged and has not been evaded under the guise of finding an absence of domicile and therefore a want of power in the court rendering the judgment.
>
> "Appropriate weight was given to the finding of domicile in the Nevada decree and that finding was allowed to be overturned by relevant standards of proof . . . fairly assessed on cogent evidence."

It should be emphasized that the marital domicile was unquestionably Wyoming and, indeed, the Florida court so found.

The decision of the Florida Court in refusing to give full faith and credit to the Wyoming decree is in direct conflict with the principles enunciated in *Atherton* v. *Atherton,* 181 U.S. 155, 45 L.ed. 794. In *Atherton* v. *Atherton,* supra, the parties had been married in New York and moved to Kentucky where they resided as husband and wife. The wife left the husband in Kentucky and returned to New York with the intention of permanently residing in that state. The wife brought an action for divorce in New York. The husband appeared in the case, and set up the fact that he had obtained a final decree of divorce in the state of Kentucky. The record showed that the husband had filed his suit for divorce in Kentucky, stating that his wife could be found in Clinton, New York and pursuant to Kentucky law, notification of the suit was sent to the wife in New York.

In the New York suit brought by the wife, the court found that the wife had not been personally served with process in the Kentucky suit and since she did not appear in the Kentucky proceedings and had ceased to be a resi-

dent of Kentucky, that she was not bound by the Kentucky decree.

The Supreme Court of the United States reversed the Court of Appeals of New York and held that the Kentucky decree was entitled to full faith and credit. The basis of the Supreme Court decision was the single fact that Kentucky was the *marital domicile.*

The finding that the marital domicile was Wyoming distinguishes the instant case from those cases decided by this Court on the theory of divisible divorce. *Vanderbilt* v. *Vanderbilt,* 354 U.S. 416, 1 L.ed. 2d 1456; *Esenwein* v. *Pennsylvania* (1945), 325 U.S. 279, 89 L.ed. 1608; *Rice* v. *Rice* (1949), 336 U.S. 674, 93 L.ed. 957; *Estin* v. *Estin* (1948), 334 U.S. 541, 92 L.ed. 1561; and *Krieger* v. *Krieger,* 334 U.S. 55, 92 L.ed. 1572. In all of those cases, one of the parties left the marital domicile, having resorted to the courts of a state other than the domiciliary state for the purpose of instituting suit.

The sole case not falling within the ambit of a non-domiciliary divorce is *Armstrong* v. *Armstrong,* 350 U.S. 568, 100 L.ed. 705. There, the petitioner while residing in Dade County, Florida, filed a suit against his wife who had separated and gone to Ohio. The wife did not personally appear in the Florida action. Service was by publication. The divorce was granted petitioner in Florida. The wife later instituted suit in Ohio for divorce and alimony and the husband set up the Florida decree as a defense to the wife's action in Ohio. The Ohio court denied her a divorce but granted to her alimony. That was affirmed by the Ohio courts and the Supreme Court of the United States granted certiorari. The sole question before the Supreme Court was whether or not the Ohio courts were required to give full faith and credit to the

Florida judgment. The majority of the court held that it was not required to give the Florida decree full faith and credit because the Florida court *did not* adjudicate any question of alimony. The court accordingly held that the decree was given full faith and credit by the courts of Ohio as far as it went. It is obvious from the opinion that had an award of alimony been made the result might well have been different. In the course of that opinion the court said:

> "As we interpret the Florida decree, however, the Florida court did not purport to adjudicate the absent wife's right to alimony. The Ohio courts, therefore, in awarding alimony to the wife, did not in fact fail to give full faith and credit to the Florida decree."

Nothing appearing in the record which shows an intent to acquire Florida domicile, Mrs. Storer remained a domiciliary of the State of Wyoming. Therefore, the Wyoming Court properly acquired jurisdiction over Respondent and its judgment is entitled to full faith and credit under the United States Constitution.

3. There is a growing trend in the law to provide for extraterritorial service of process in divorce cases based upon a theory that jurisdiction obtains in the situs of the marital domicile. Indeed, the decisions of this court which spawned the theory of divisible divorce were predicated upon the now obsolete principles announced in *Pennoyer* v. *Neff,* 95 U.S. 714, which held that a personal judgment could not be obtained in the absence of personal service within the jurisdiction. The *Pennoyer* v. *Neff,* supra, doctrine has been for all practical purposes, swept under the rug by the advent of the long arm statute and a change in the concept of what is necessary to satisfy the requirements of due process.

Courts of other jurisdictions have had this problem of service outside the boundaries of the domiciliary abode. These statutes have uniformly been upheld. There are several cases squarely in point to this situation.

In *Mizner* v. *Mizner*, 439 P.2d 679 (Nev. 1968), as to which the Supreme Court of the United States denied certiorari (398 U.S. 487), the Supreme Court of Nevada held that a decree providing for alimony was entitled to full faith and credit in the Nevada courts where the wife brought the action in California and the husband was served in Nevada pursuant to a California statute. The parties, as here, had been residents of the domiciliary state (California) up to the time of his separation from his wife. In upholding the validity of the California decree for alimony, the Supreme Court of Nevada said:

"The rule of Pennoyer has been substantially eroded by the High Court. Gambs v. Morgenthaler, 83 Nev. 90, 423 P.2d 670 (1967). Nondomiciliaries of the forum state have been subjected to the personal jurisdiction of that state without offending the demands of either procedural or substantive due process. (Citing authorities) In International Shoe, supra, the court wrote: 'due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."' 326 U.S. at 316, 66 S.Ct. at 158.

"None of the cited cases involves a personal judgment for alimony. Still, it seems to us that the minimum contacts concept of in personam jurisdiction is peculiarly suited to matrimonial support cases. If such

contacts are in fact present in the particular case before the court, then the extension of in personam jurisdiction beyond the borders of the forum state may prove to be a sensible step in solving some of the hardships arising from family separation. Courts must know by this time that strict application of the Pennoyer rule to family support cases has encouraged migratory divorce by offering a shield to a spouse wishing to avoid financial responsibility. The state of the matrimonial domicile has a deep interest in its citizens and a legitimate purpose in taking steps to preclude their impoverishment. Accordingly, it is our opinion that in personam jurisdiction may be acquired over a non-resident defendant in a divorce action by extraterritorial personal service of process if (1) a statute of the support ordering state has authorized the acquisition of such jurisdiction in that manner, and (2) there exist sufficient contacts between the defendant and the forum relevant to the cause of action to satisfy 'traditional notions of fair play and substantial justice.' The demands of due process are satisfied in these circumstances."

The fact that this court denied certiorari in the above case evidences a departure from *Pennoyer*, supra. *Vanderbilt*, supra; *Williams*, supra.

In *Smith* v. *Smith*, 288 P.2d 497 (Cal. 1955), the wife instituted a divorce action in California and the husband was served with process upon him in the State of New York. In holding that service subjected the husband to the jurisdiction of the California court and authorized an in personam judgment against him, the court said:

"Defendant appeals from certain portions of the interlocutory decree of divorce and related orders. He

challenges the propriety of the trial court's assumption of an in personam jurisdiction over him by virtue of the service of process on him without the state. His objections cannot prevail in view of the provisions of the governing statutes. Code Civ. Proc. Secs. 412, 413, 417.

"While the court did not make a specific finding as to the domicile of defendant, it is clear from the record that it denied relief to defendant upon acceptance of plaintiff's claim that defendant was at the time of the commencement of the divorce action a domiciliary of this state, and hence the court had jurisdiction to render an in personam judgment against him following the personal service of process on him in New York. Code Civ. Proc. Sec. 417. Defendant contends that the words 'resident of this State' as used in the cited statute, do not contemplate domicile as the jurisdictional factor but rather require residence in fact, even physical presence, of defendant within the state; but such contention cannot be sustained. * * *

"Then in Milliken v. Meyer, 1940, 311 U.S. 457, 61 S.Ct. 339, 341, 84 L.Ed. 278, these principles of jurisdiction were re-examined, and it was decided that despite the broad language of Pennoyer v. Neff, supra, domicile in the state where a personal action is brought makes an absent defendant amenable to personal service without the state, having due regard for the requirement of due process. The state statute there applying authorized such service when a 'resident * * * departed * * * to avoid * * * service.' In California, however, according to dictum in Pinon v. Pollard, 1945, 69 Cal. App. 2d 129, 132, 158 P. 2d 254, the case of De la Montaya still remained the law. * * *"

It is, therefore, abundantly clear that the entire concept of divisible divorce, i.e. that the state where the marital domicile was last maintained may be the proper forum to divorce the parties, but may have lost jurisdiction to affect a property settlement because one party has left the state, no longer has any foundation in the law.

The entire concept of divisible divorce was grounded upon what has become a fallacious premise, viz.: that personal service within the jurisdiction is a must in order to satisfy the requirements of due process.

In the case at bar, the marital domicile was unquestionably Wyoming, the Wyoming statute provided for extra-territorial service upon absent domiciliary and such service was effected upon Mrs. Storer in Florida. Therefore, the Wyoming judgment should have been given full faith and credit in Florida.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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By: /s/ SAM SPECTOR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail to KELLY, BLACK, BLACK & KENNY, P.A., 1400 Alfred I. duPont Building, Miami, Florida 33131; and SAM DANIELS, 1414 Alfred I. duPont Building, Miami, Florida 33131, Attorneys for Respondent, on this 20th day of September, 1977.

/s/ SAM SPECTOR

APPENDIX

THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF WYOMING IN AND FOR CARBON COUNTY

Docket No. 10629

GEORGE B. STORER,
Plaintiff,

vs.

DOROTHY M. KIGGINS STORER,
Defendant.

DECREE AND JUDGMENT

(Filed May 30, 1972)

On this day came on to be heard this divorce action, George B. Storer appearing in person and by his attorney Byron Hirst of Hirst, Applegate & Dray, and the Defendant Dorothy M. Kiggins Storer not appearing in person or by attorney or otherwise. Having carefully considered the record in this Court with respect to this proceeding and having heard the evidence and having fully considered, the Court finds as follows:

1. Plaintiff and Defendant were married to each other at Saratoga, Carbon County, Wyoming, on 16 July 1960 and they ever since have been and now are husband and wife, and Plaintiff has resided in Wyoming from the time of the marriage until now.

2. Defendant Dorothy M. Kiggins Storer concealed herself and absented herself from the State of Wyoming in order to avoid service of process in Wyoming and was

at 26 Indian Creek Island, Miami, Florida, where she was served with process according to law 25 April 1972.

3. Defendant Dorothy M. Kiggins Storer duly was served with process according to law, personally and in person according to the requirements of the laws of the State of Wyoming and the Wyoming Rules of Civil Procedure and she had actual notice of the contents of the Summons and the Complaint.

4. Defendant had to and including 25 May 1972 to file an answer or other pleading with respect to the Complaint and Summons duly served and she has failed to plead or otherwise defend as provided by the Wyoming Rules of Civil Procedure and she hereby is declared to be in default.

5. Defendant has offered such indignities to Plaintiff as have and now do render intolerable his condition as her husband.

6. The parties to this marriage have had no children of this marriage. Defendant Dorothy M. Kiggins Storer is independently wealthy and is over 70 years of age and in good health. Plaintiff having requested the Court to fix proper amounts for a property settlement and alimony and the Court having considered the assets of the parties, the source thereof and the circumstances in which they will be left by this decree, hereby finds that the property settlement and the amount provided for the support of Defendant Dorothy M. Kiggins Storer as stated hereinafter are fair, reasonable and proper and should be and hereby are approved and confirmed by this Court.

7. The Court finds it has jurisdiction of the subject matter and of the parties and finds generally for Plaintiff George B. Storer and against Defendant Dorothy M. Kiggins Storer.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

A. George B. Storer hereby is given a divorce from Dorothy M. Kiggins Storer and their marriage on 16 July 1960 at Saratoga, Wyoming, hereby is finally terminated.

B. Plaintiff George B. Storer shall pay to the Clerk of this Court on or before 10 July 1972 the sum of $300,000 in tax free bonds at present value as full and final settlement of the property rights of the parties finally and forever, said amount to be paid to said Defendant by the Clerk.

C. George B. Storer shall pay to Defendant Dorothy M. Kiggins Storer, so long as she shall remain unmarried, alimony in the amount of $2500 per month, payable on the 1st day of June 1972 and of each month hereafter, payable to the Clerk of this Court.

DATED: 30 May 1972.

BY THE COURT:
Judge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA CIVIL ACTION
GENERAL JURISDICTION DIVISION

No. 72-10445

In re: Marriage of

DOROTHY M. STORER, Wife,

and

GEORGE B. STORER, et al.,

Respondents.

ORDER DENYING MOTION TO QUASH AND MOTION FOR SUMMARY JUDGMENT

This cause came on to be heard upon the motion to quash service of process filed by George B. Storer on July 17, 1972; and upon the motion of Dorothy M. Storer to establish the domicile of Dorothy M. Storer as of April 25, 1972; and upon the motion of George B. Storer for summary judgment. The Court initially reserved ruling on the motion to quash and authorized resort to discovery proceedings for the purpose of ascertaining the jurisdiction of the Court. Upon consideration of the evidence of the respective parties and argument of counsel, the Court finds that until January, 1972, the legal residence of both of the parties was Wyoming. The Court further finds that the residence of George B. Storer remained in Wyoming, but that Dorothy M. Storer, between January, 1972, and April 25, 1972, changed her legal residence from that of Wyoming to Florida, and on April 25, 1972, the date upon which she was served with process in Florida in the Wyoming divorce proceedings, and thereafter, she was not a domiciliary of Wyoming but was a domiciliary

of the State of Florida. The Court further finds that the decree of the Wyoming court is entitled to full faith and credit under the Constitution of the United States insofar as it relates to the dissolution of the marriage but that the Wyoming decree is not entitled to full faith and credit under the Constitution of the United States insofar as it attempted to adjudicate alimony and the property rights of the parties, since Dorothy M. Storer was not a domiciliary of Wyoming on April 25, 1972. Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. That the Wyoming decree of divorce dated May 30, 1972, dissolving the bonds of matrimony existing between the parties is a valid and binding judgment with respect to the provisions thereof which decrees the dissolution of the marriage. That the provisions in the Wyoming decree of divorce relating to the wife's alimony right or other property rights are not binding upon her or upon this Court and that this Court has complete jurisdiction to adjudicate questions relating to her alimony and property rights. That insofar as property rights and alimony are concerned, the Wyoming decree is not res adjudicata and is not entitled to full faith and credit under the Constitution of the United States as the wife was not a resident or domiciliary of the State of Wyoming when she was served with process in the Wyoming divorce proceedings on April 25, 1972, in Florida.

2. That ground 1 of George B. Storer's motion to quash is denied. That grounds 2 and 3 of George B. Storer's motion to quash which averred lack of jurisdiction of the person and property of George B. Storer predicated solely upon constructive service of process have become moot with the filing of the answer by George B. Storer.

3. That the motion of George B. Storer for summary judgment be and the same is hereby denied.

4. That the cause is set for final hearing on June 26, 1974, commencing at 10:00 o'clock A.M.

DONE AND ORDERED at Miami, Dade County, Florida, this 23 day of April, 1974.

Murray Goodman
Circuit Judge

Copies furnished to:

Kelly, Black, Black & Kenny, P.A.

Gunn, Venney & Buhler

Patton, Kanner, Nadeau, Segal, Stobs & Zeller

Dixon, Dixon, Lane & Mitchell

Therrel, Baisden, Peterson, Stanton & Stillman

Not Final Until Time Expires to File Rehearing Petition and If Filed, Disposed of.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
July Term, A.D. 1974

Case No. 74-740

GEORGE B. STORER,
Appellant,

vs.

DOROTHY M. STORER,
Appellee.

Opinion filed December 17, 1974.

An Interlocutory Appeal from the Circuit Court for Dade County, Jack A. Falk, Judge.

Patton, Kanner, Nadeau, Segal, Stobs & Zeller, for appellant.

Kelly, Black, Black & Kenny and William G. Earle, for appellee.

Before PEARSON and NATHAN, JJ., and GREEN, ROBERT A. JR., Associate Judge.

PER CURIAM.

This interlocutory appeal is from an order of the circuit court denying the husband's motion to quash.

The motion was grounded upon lack of jurisdiction of the subject matter and of the parties and insufficiency of service of process. Attached to the husband's motion to quash was a copy of a final judgment of divorce dated May 30, 1972, entered by a Wyoming state court on a

complaint for divorce brought by the husband. The complaint by the wife for dissolution of marriage was filed May 22, 1972, in Dade County, Florida; it was later amended to include a request for other relief, including alimony and adjudication of property rights.

The appellant presents four issues on appeal: (1) Whether the wife was a legal domiciliary of the State of Wyoming when she was served with process in the State of Florida in accordance with the laws of the State of Wyoming so as to render the Wyoming decree conclusive upon the issue of alimony and property rights? (2) Whether the Wyoming judgment of divorce, which not only divorced the parties but also made an award of alimony, is entitled to full faith and credit under the Constitution of the United States? (3) Whether the wife was entitled to collaterally attack the Wyoming decree in Florida? (4) Whether it was error for the court to refuse to dismiss the complaint for dissolution of marriage when it appeared that the wife had not been a Florida resident for six months before filing her complaint for dissolution of marriage?

In answering these questions, we first look to the findings of fact recited by the chancellor in the order denying the motion to quash:

> ". . . until January, 1972, the legal residence of both of the parties was Wyoming. The Court further finds that the residence of George B. Storer remained in Wyoming, but that Dorothy M. Storer, between January, 1972, and April 25, 1972, changed her legal residence from that of Wyoming to Florida, and on April 25, 1972, the date upon which she was served with process in Florida in the Wyoming divorce proceedings, and thereafter, she was not a domiciliary of Wyoming but was a domiciliary of the State of Florida."

It is well established that the chancellor's findings come to the appellate court clothed with a presumption of correctness, and should not be disturbed unless they are clearly erroneous; and that the appealing party has the burden of demonstrating that the decision is clearly erroneous. Marx v. Goldfinger, Fla. App. 1966, 187 So.2d 380; Mitchell v. Morse Operations, Inc., Fla. App. 1973, 276 So.2d 248. After careful review of the record on appeal, we find there was substantial evidence to support the chancellor's findings of fact.

We next look to the conclusions of law which the chancellor included in the order.

> ". . . that the decree of the Wyoming court is entitled to full faith and credit under the Constitution of the United States insofar as it relates to the dissolution of the marriage but that the Wyoming decree is not entitled to full faith and credit under the Constitution of the United States insofar as it attempted to adjudicate alimony and the property rights of the parties since Dorothy M. Storer was not a domiciliary of Wyoming on April 25, 1972 . . ." and ". . . that the provisions in the Wyoming decree of divorce relating to the wife's alimony right or other property rights are not binding upon her or upon this court and that this court has complete jurisdiction to adjudicate questions relating to her alimony and property rights."

From careful review of the briefs of counsel, and the arguments discussed therein, as applied to the chancellor's findings of fact, we find there was no error of law.

Therefore, for the reasons stated, the order appealed is affirmed.

Affirmed.

Not Final Until Time Expires to File
Rehearing Petition and, if Filed,
Determined.

IN THE SUPREME COURT OF FLORIDA

January Term, A. D., 1977

Case No. 46,935

DCA Case No. 74-740

PETER STORER AND STUART W. PATTON as
Co-Executors of the Estate of GEORGE
B. STORER, deceased,
Petitioners,

vs.

DOROTHY M. STORER,
Respondent.

Opinion filed April 7, 1977

Writ of Certiorari to the District Court of Appeal, Third District

Sam Spector, Cynthia S. Tunnicliff and Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, for Petitioners

William G. Earle and Hugo L. Black, Jr. of Kelly, Black, Black & Kenny; and Sam Daniels, for Respondent

PER CURIAM

The petition for writ of certiorari reflected apparent jurisdiction in this Court. We issued the writ and have heard argument of the parties. Upon further consideration of the matter, we have determined that the cited decisions present no direct conflict as required by Article V,

Section 3(b)(3), Florida Constitution. Therefore, the writ must be and is hereby discharged.

It is so ordered.

OVERTON, C.J., BOYD, ENGLAND, SUNDBERG and HATCHETT, JJ., Concur

ADKINS, J., Dissents with an opinion with which ROBERTS (Retired) J., Concurs

ADKINS, J., dissenting.

Until January, 1972, the legal residence of both husband and wife was Wyoming. The residence of the husband remained in Wyoming. Between January, 1972, and April 25, 1972, the wife changed her residence from Wyoming to Florida. On April 25, 1972, the date upon which she was served with process in Florida in the Wyoming divorce proceedings, the wife was a resident of Florida and remained so during the pendency of the proceeding. The District Court held that the provisions of the Wyoming decree of divorce relating to the wife's alimony right or other property rights were not binding upon her and that portion of the Wyoming decree was not entitled to full faith and credit under the Constitution of the United States.

In *Pinebrook* v. *Pinebrook*, 329 So.2d 343 (Fla. 4th DCA 1976), the husband and wife established a marital domicile in California which they maintained for over eight years. In 1973 the wife, who continued to reside in California, instituted divorce proceedings. However, the husband was residing in Utah and was served with process under the provisions under the California Long Arm statute. The husband made no appearance in the California action. The California court dissolved the marriage, awarded the wife custody of the child, ordered the husband to pay alimony, child support and attorney fees, and directed the parties to

sell certain Florida real estate and to divide the proceedings therefrom.

The wife brought suit in Florida to enforce that portion of the decree ordering the disposition of the Florida property. The husband contended that this portion of the order was a personal judgment which could only be entered upon the acquisition of personal jurisdiction. The District Court held that the form of service was calculated to give actual notice to the husband by serving him by certified, airmail, return receipt requested. The court in its opinion said:

> "We now turn to the second due process requirement and the second prong of our initially posed inquiry, whether appellee had sufficient minimum contacts with the forum state, California, to justify the imposition of personal jurisdiction. The power of a court to obtain personal jurisdiction over an out-of-state defendant has been greatly expanded since *Pennoyer* v. *Neff*, 95 U.S. 714, 24 L.Ed. 565 (1877) which held that personal jurisdiction over a nonresident could only be obtained by personal service within the boundaries of the forum state or by the defendant's voluntary appearance in the action. The basic modern rule was announced in *International Shoe Co.* v. *Washington*, (326 U.S. 310) supra:
>
> " 'Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. *Pennoyer* v. *Neff*, 95 U.S. 714, 733, 24 L.Ed. 565, 572. But now that the capias ad respondendum has given way to personal service of summons or other form of notice, *due process requires only that in order to subject*

> *a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."* ' " 329 So.2d at 347.

The court pointed out that the minimum contact held sufficient to satisfy due process has consisted of as simple an act as maintenance of the last marital domicile within the forum state, coupled with one spouse's continued residence in the forum state. This is exactly the situation in the case *sub judice*, as the husband Storer remained in Wyoming.

Wyoming law permits acquisition of personal jurisdiction over a nonresident. The Wyoming court specifically found that it acquired personal jurisdiction under the laws of that state. Requiring a nondefendant to submit to such jurisdiction under the circumstances of the case *sub judice* is consonant with the requirements of due process.

In *Storer, supra*, the District Court held that the nonresidence of the defendant precluded any possibility of a valid personal judgment in Wyoming which would be entitled to full faith and credit.

This Court in *Carroll* v. *Carroll*, 341 So.2d 771, Case No. 48,495, opinion filed January 13, 1977, in discussing venue, approved a decision of the First District Court which held that venue should be in that county in which the marriage was last evidenced by a continuing union of partners who intended to remain married, indefinitely if not permanently. As stated by the Court,

> "The venue problem will be no more difficult than finding where the marriage partners called home."

Under this pronouncement, the former marital relationship in Wyoming is a sufficient minimum contact to satisfy due process.

The question before us is whether or not the long arm statute of the forum state was sufficient to acquire personal jurisdiction over the nonresident wife so that the subsequent judgment was entitled to full faith and credit. *Storer* v. *Storer, supra,* says no. *Pinebrook* v. *Pinebrook, supra,* says yes. There is conflict.

We should also note the case of *Lefkovitz* v. *Lefkovitz,* ..... So.2d ..... (Fla. 1st DCA), Case No. AA-86, opinion filed December 30, 1976. The court held that an Illinois court did not acquire personal jurisdiction of the husband, a former resident of Illinois, because the act giving rise to the Illinois divorce action occurred in Florida and at that time there was no marital domicile in Illinois. The dissenting opinion, referring to the confusion now existing among the courts of Florida in applying the full faith and credit provision of the constitution, contains the following:

> "Locating the marital domicile for divorce jurisdiction purposes once depended on the merits of the case, because a husband departing to another state took with him the 'domicile of matrimony' and that of his wife only if he left faultlessly. *Haddock* v. *Haddock,* 201 U.S. 562, 571-72, 26 S.Ct. 525, 528, 50 L.Ed. 867, 870 (1906). The Supreme Court's first decision in *Williams* v. *North Carolina,* 317 U.S. 287, 63 S.Ct. 207, 87 L.Ed. 279 (1942), was thought to have put an end to the difficulty of that rule by holding that courts at the domicile of either partner may divorce them. But the concept of a marital domicile—in the simpler sense of the last homeplace the marriage partners shared—has found renewed usefulness

> to legislatures reaching to claim for their courts personal jurisdiction, incident to the termination of marriage, to exact alimony and other financial adjustments from the absent spouse. Thus, it has repeatedly been held, most recently in Judge Owen's scholarly opinion for the District Court of Appeal, Fourth District, that due process standards permit a state to assert personal jurisdiction over a departed husband to enforce his obligation to support a stay-behind spouse long domiciled at the forum. *Pinebrook* v. *Pinebrook,* 329 So.2d 343 (Fla. App.4th 1976), and cases cited at 348. To affirm the jurisdictional interests of that state 'seems so sensible,' wrote one commentator on the murky doctrines of domicile, 'that it should be obvious to any one who had never become confused by studying law.' Powell, *And Repent at Leisure,* 58 Harv.L.Rev. 930, 955 (1945). See also Restatement (Second) of Conflicts § 77 (1971)."

In *Mitchim* v. *Mitchim,* 518 S.W.2d 362 (Tex. 1975), the Supreme Court of Texas said:

> "In personam jurisdiction may constitutionally be acquired by extraterritorial service of process on natural persons as in the case of corporations. See McGee v. International Life Ins. Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223; Calagaz v. Calhoon, 5th Cir., 309 F.2d 248; Owens v. Superior Court of Los Angeles Co., 52 Cal.2d 822, 345 P.2d 921; Mizner v. Mizner, 84 Nev. 268, 439 P.2d 679. Respondent argues that this is not true with respect to cases involving marital relationships. He insists that May v. Anderson, 345 U.S. 528, 73 S.Ct. 840, 97 L.Ed. 1221, stands for the proposition that the so-called minimum contacts doctrine has no application in the field of domestic relations. That was one of the arguments advanced

by the dissenting justices in Mizner v. Mizner, supra.

"The decision in *May* provides no support for respondent's position. It was held there that a Wisconsin divorce decree awarding custody of minor children to their father was not entitled to full faith and credit in Ohio since the Wisconsin court did not have personal jurisdiction over the mother. The lack of personal jurisdiction over the mother was due, however, to the absence of statutory authority. The Wisconsin statute authorizing extraterritorial service of process did not purport to confer personal jurisdiction over the party thus served.

"In recent years a number of states have adopted long-arm statutes with specific language making them applicable to cases growing out of domestic difficulties. These statutes are given their intended effect. See Scott v. Hall, 203 Kan. 331, 454 P.2d 449; Dillon v. Dillon, 46 Wis.2d 659, 176 N.W.2d 362. In other states long-arm statutes containing only general language have been held to confer personal jurisdiction over nonresident defendants in divorce actions. See Soule v. Soule, 193 Cal.App.2d 443, 14 Cal.Rptr. 417; Mizner v. Mizner, 84 Nev. 268, 439 P.2d 679; Hines v. Clendening, Okl., 465 P.2d 460; Stucky v. Stucky, 186 Neb. 636, 185 N.W.2d 656. See also 51 Neb.L.Rev. 159; 20 Hastings L.J. 361. The Arizona Court of Appeals has held that their Rule 4(e)(2) enables the court to acquire personal jurisdiction in a paternity suit. Backora v. Balkin, 14 Ariz.App. 569, 485 P.2d 292. Other decisions indicate that the courts of Arizona make no distinction between domestic relations cases and other types of suits. See Garlitz v. Rozar, 18 Ariz.App. 94, 500 P.2d 354; Rodriguez v. Rodriguez, 8 Ariz.App. 5, 442 P.2d 169." At 365.

In explaining the rationale for applying the minimum contacts test in matrimonial cases, the District Court in *Pinebrook, supra,* quoted from *Mizner* v. *Mizner,* 84 Nev. 268, 439 P.2d 679 (1968), cert. denied 393 U.S. 847, 89 S.Ct. 130, 21 L.Ed.2d 117 (1968), as follows:

> ". . . it seems to us that the minimum contacts concept of in personam jurisdiction is peculiarly suited to matrimonial support cases. If such contacts are in fact present in the particular case before the court, then the extension of in personam jurisdiction beyond the borders of the forum state may prove to be a sensible step in solving some of the hardships arising from family separation. Courts must know by this time that strict application of the *Pennoyer* rule to family support cases has encouraged migratory divorce by offering a shield to a spouse wishing to avoid financial responsibility. The state of the matrimonial domicile has a deep interest in its citizens and a legitimate purpose in taking steps to preclude their impoverishment. Accordingly, it is our opinion that in personam jurisdiction may be acquired over a nonresident defendant in a divorce action by extraterritorial personal service of process if (1) a statute of the support ordering state has authorized the acquisition of such jurisdiction in that manner, and (2) there exist sufficient contacts between the defendant and the forum relevant to the cause of action to satisfy 'traditional notions of fair play and substantial justice.' The demands of due process are satisfied in these circumstances." [footnotes omitted] 329 So.2d at 347-48.

The District Court in *Pinebrook, supra,* then added:

"As was pointed out by the New Jersey court, writing in *Egbert* v. *Egbert,* supra, 309 A.2d at 748:

> " 'The existence of a marital domicile in a state has as many consequences as economic activity does. . . .'

"Although the *Mizner* and *Egbert* cases were concerned specifically with the enforcement of matrimonial *support* provisions, we find their rationale equally compelling with regard to a provision directing a division of property such as involved in the case at bar. The enforcement of such a provision can be just as critical to the overall economic situation of the spouse remaining in the forum state as enforcement of a periodic support provision.

"The minimum contacts held sufficient to satisfy due process in the cited matrimonial cases have consisted of as simple an act as maintenance of the last marital domicile within the forum state, coupled with the petitioning spouse's continued residence in the forum state, ..." 329 So.2d at 348.

I conclude that the Wyoming law permits acquisition of personal jurisdiction over a nonresident by extra-territorial service. The Wyoming court found that such notice was given and personal jurisdiction acquired. I further conclude that requiring a defendant to submit to such jurisdiction under these circumstances is consonant of the requirements of due process. I would hold that the Wyoming divorce decree, insofar as it constituted a personal judgment, is valid and therefore entitled to enforcement in our courts under the full faith and credit clause of the United States Constitution. For that reason the petition or complaint of the wife should have been dismissed.

The decision of the District Court of Appeal should be quashed and the cause remanded to the trial judge with instructions to grant the husband's motion to quash.

ROBERTS (Retired) J., Concurs

IN THE SUPREME COURT OF FLORIDA

Tuesday, June 28, 1977

Case No. 46,935

DCA Case No. 74-740

PETER STORER and STUART W. PATTON as Co-Executors of the Estate of GEORGE B. STORER, deceased,
Petitioners,

vs.

DOROTHY M. STORER,
Respondent.

On consideration of the petition for rehearing and clarification filed by attorneys for petitioners,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

OVERTON, C.J., BOYD, ENGLAND, SUNDBERG and HATCHETT, JJ., concur

ADKINS, J., dissents

ORDERED that the Motion for the Entry of an Order Staying Mandate filed by attorneys for petitioners is hereby granted and proceedings in this Court and in the District Court of Appeal, Third District, and in the Circuit Court in and for Dade County, Florida are hereby stayed to and including July 28, 1977 to allow petitioners to seek review in the Supreme Court of the United States and obtain any further stay from that Court.

ORDERED that the Motion for Order Making Petition for Rehearing Part of the Record and Motion for

Order Making Reply to Response to Motion for Stay of Mandate Part of the Record are hereby granted.

A True Copy

TEST:

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

cc: Hon. Louis J. Spallone, Clerk

Hon. Richard P. Brinker, Clerk
(with copy for circuit judge)

Hon. Sam Spector
of Spector & Tunnicliff

Hon. William G. Earle
of Kelly, Black, Black & Kenny

Hon. Sam Daniels
Patton, Kanner, Nadeau, Segal, Zeller
& LaPorte

EXCERPTS FROM TRANSCRIPT

Q. (By Mr. Black) Let me ask you this, you don't live with Mr. Storer now, do you?

A. No, I haven't been.

Q. You mentioned a separation, we will call it that so we will have a non-controversial type word. When did Mr. Storer officially separate from you?

A. The 25th of January or 26th.

• • •

Q. Mrs. Storer, after Mr. Storer met you in the parking lot, did you have any further contact with him or did you make any further contact with him?

A. Well, I wrote him a letter asking him if he'd think about it and would he please talk to me, which he never had.

Q. What if anything did you think about in the way of your residence after Mr. Storer had notified you that he was going to leave you and there was no chance of reconciliation?

MR. NADEAU: I object to what her thinking was.

MR. BLACK: It is important, your Honor.

THE COURT: Overruled.

THE WITNESS: Well, Florida. I thought of California and went out and looked at it and decided I didn't like it, and came back to Florida.

Q. (By Mr. Black) When did you get back to Florida?

A. I went out the early part of March and I got back about the 16th of March.

MR. NADEAU: What year, may I ask?

THE WITNESS: This is '72.

• • •

Q. (By Mr. Black) Mrs. Storer, I show you a document which has been marked for identification as Plaintiff's Exhibit 1K. I ask you to look at the signatures on that and see if you can recognize them.

A. Yes. That is mine.

Q. Did you sign that document?

A. It is my signature on it, I certainly must have signed.

Q. Where were you when you signed it?

A. At my home in Indian Creek Island. It was sent to me.

Q. Can you tell us what the date was?

A. I can tell, yes, if I look down here. April 13, 1972.

* * *

Q. Then it was after the scheduled time that you were to go to Wyoming in April of 1972, is that correct?

A. I guess so.

Q. Now, Mrs. Storer, what address did you give him to send your personal effects?

A. Beacon Storage Company.

Q. Where is Beacon Storage Company?

A. In San Diego.

Q. Were those furnishings sent there?

A. Yes.

Q. Where are they now?

A. Right there.

Q. Still there?

A. Yes.